

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (RCC) ECF Case
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*This document relates to: New York Marine and General Insurance Co. v. Al Qaida,
 et al.
 Case No.: 04-CV-6105 (RCC)*

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO
DISMISS OF DEFENDANT MAR-JAC POULTRY, INC.**

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**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO
DISMISS OF DEFENDANT MAR-JAC POULTRY, INC.**

Plaintiff, NEW YORK MARINE AND GENERAL INSURANCE COMPANY ("NYMAGIC"), commenced the instant action to recover damages resulting from the terrorist attacks of September 11, 2001. After the action was commenced it was consolidated with other similar cases in the multi-district litigation, *In Re: Terrorist Attacks on September 11, 2001*; 03 MDL No.: 1570 (RCC) ("MDL 1570").

Defendant, MAR-JAC POULTRY, INC ("Mar-Jac"), has filed a motion to dismiss NYMAGIC's First Amended Complaint ("1AC") pursuant to Fed. R. Civ. Proc. 12(b)(6) ("Motion to Dismiss"). Mar-Jac argues that the allegations contained in the 1AC are insufficient to state a cause of action against Mar-Jac. In accordance with the Court's Case Management Order #2, on September 30, 2005, NYMAGIC filed its Second Amended Complaint in this action ("2AC"). The allegations in the 2AC are virtually identical to the allegations contained in the First Amended Complaint filed by the plaintiffs in *Federal Insurance Co., et al v. Al Qaida, et al.*, 03 CV 06978 (RCC), an action also consolidated in MDL 1570 (the "Federal Ins. Action"). Accordingly, and deficiencies contained in NYMAGIC's 1AC have been cured by the 2AC.

Moreover, the arguments set forth in Mar-Jac's Motion to Dismiss are substantially identical to the arguments contained in the motion to dismiss filed on May 10, 2004 by Mar-Jac against the plaintiffs in the Federal Ins. Action. See 03 cv 06978 ECF Docket No. 110. Thus, to avoid burdening the Court with the filing of duplicative papers, NYMAGIC, as its opposition to Mar-Jac's Motion to Dismiss, respectfully adopts

the arguments submitted by the plaintiffs in the Federal Ins. Action in their Memorandum of Law in Opposition to Mar-Jac's Motion to Dismiss filed on July 9, 2004 and incorporates said arguments by reference herein. See 03 MD 01570 ECF Docket No. 292.

For the reason set forth therein, NYMAGIC respectfully requests that the instant motion be denied in all respects.

Dated: New York, New York
October 7, 2005

Respectfully submitted,
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